IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

No. 522

BALFOUR, GUTHRIE & CO., LTD., and COMMONWEALTH AFRICAN, LTD.,

Petitioners,

against

Steamship ZAREMBO, her engines, etc., AMERICAN-WEST AFRICAN LINE, INC.,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

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Statement

Although in the courts below the Zarembo was found unseaworthy as to the particular plate in which the two cracks occurred, this unseaworthiness consisted of a latent defect, as found by the District Court. It was not a case of wearing or wastage of the plate but a weakening and oxidation of the metal along the edge of two longitudinal beams and in the line of the two cracks due to stresses in the plate, differences of potential and action of salt

water, the oxidized and fatigued metal remaining in the plate in the line of the cracks (*infra*, p. 8). There was no evidence in the case that the plate was worn thin before the cracks occurred. After the cracks had occurred and the plate was removed at New York, the thickness of the metal at the bottom of the grooves where the cracks occurred showed more than a reduction in thickness of 25%, the limit usually accepted as the maximum (Opinion District Court, 1273, 1274*). The defect however was a minor one as the edges of the two cracks (one about 2 feet and one about 3 feet long) were so close together that Mr. Stanley, the expert for petitioners, was unable to get the blade of his small pocket knife into the crack (203). The evidence is overwhelming that the grooves in the centers of which the cracks occurred became grooves only when the cracks occurred and the hard oxidized metal in the grooves was dislodged at the time of the cracking (1281, 285, 294, 295, 292, 350-352, 1091-1094, 333, 342-343, 1127). Even when the cracks occurred, no damage would have happened were it not for the fact that the petitioners' insufficient bags, into which sample holes had been punched, permitted the small beans to escape and get down into the bilges and suctions and clog the pumps (684, 563, 564, 853); otherwise the pumps could have taken care of all the water which could get through the two cracks (853).

It was impossible to tell when this weakening or oxidizing of the metal started as it could not be seen from the outside (285, 282, 1092).

The statement on page 3 of petitioners' petition that one of the adjoining plates had been condemned on a survey because showing signs of wastage is inaccurate. There was no condemnation but only a recommendation by the surveyor that the F-1 plates be renewed at the next regular drydocking which would have been within a year (989). These plates were not adjoining plates (993, 555, 601, 605)

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* All references in this brief are to pages of the Record.

but were in the forepeak tank while the plate that cracked was in No. 1 hold (1279). These two plates were drilled in January 1939 and found to be perfectly good for another year (303), a staging being erected in the drydock to more carefully examine the bow plates and drill the two plates (989).

In November, 1939, these F-1 plates were examined again and found to be satisfactory until the next annual drydocking (966, 967, 989), and it is undisputed that no leakage occurred in these plates, even in the terrific weather that the Zarembo encountered on the voyage in question.

Special attention was given to the bow plates on the numerous examinations before the vessel sailed (959, 551, 243, 982, 331). On the January, 1939, survey, referred to by petitioners, *the cargo battens or wooden vertical strips had been removed at the time the vessel was inspected*, inside and outside (245). Although they were in place on the November, 1939, survey, just before the vessel sailed, the photograph (Libellants' Exhibit 7) attached to the appendix to the petition, is very misleading. It clearly shows that it was taken from the after part of the hold looking forward. Naturally the distances between the cargo battens would look much narrower than if the photograph were taken at right angles. The evidence is also undisputed that the cargo battens did not interfere at all with the examination of the plate (872) and the District Court so found (1288). They were from six to seven inches apart and only five and one-half inches wide and seven inches from the plate by actual measurements (1002).

The petition (p. 3) refers to the "majority opinion of the Circuit Court of Appeals." However, the concurring opinion agreed with the finding of the majority, that due diligence had been exercised and only differed on the question of the effect of the claim clause, which, however, became immaterial because of the finding that the 53 bags in

question were in the No. 1 hold with the other bags and damaged by sea water (1295).

On the November, 1939, survey, just before the ship sailed on the voyage in question, Capt. Kelly, the U. S. Inspector, had a hammer and knocked the rivet heads and any places on the plates in the No. 1 hold, which showed any evidence of corrosion, and Atwood, the Chief Officer, had a 12″ bent-end file scraper and used one end to sheer into and scrape off any place where there was a little film of rust or flick of paint and the other end to knock a rivet head or knock in the middle of the plate (551, 555). He remembered distinctly knocking with his scraper on the G-2 plates. They had butt straps and so were easy to remember (551). Petitioners' experts testified that the use of such a scraper is perfectly satisfactory (427). The evidence is undisputed that the plating was hammered on both surveys where there were any signs of corrosion, and petitioners' experts appear to agree that that was the usual method (389-390; 426-427), and both Courts so found (1343, 1275).

It is undisputed that no grooves were visible on the outside or inside of this G-2 plate at the time of the January, 1939, and November, 1939, surveys, or when the inside of No. 1 hold was examined on the voyage out to Africa (561, 562, 869, 870), or when the outside of the plating was examined while the ship was loading in Africa (1040-1042).

The Decisions Below

The District Court did not find that the plating was worn more than three times beyond the maximum wear considered safe, but that the plate, when measured after it had been removed on the return to New York showed more than a reduction in thickness of 25%, the limit usually accepted as the maximum, and that therefore as to No. 1

hold the vessel was unseaworthy (1274). The Circuit Court of Appeals speaks of the plating being thin in excess of 75%, saying, however: "though, of course, this is hindsight;" (1343). It of course referred to the condition of the plate after the vessel had gone through the mountainous seas to Bermuda, had wedges driven in where the cracks were (1294), had the plate scaled there (203) and a patch put over the cracks and sailed to New York through heavy seas (1295) and after the oxidized metal had come out of the groove. It properly found on the evidence that the plating had been hammer-tested, inside and out, before the voyage, and numerous visual examinations made by fifteen men and that what appeared as the exercise of due diligence disclosed no flaws (1343), and that although the libellants contended that more stringent tests should have been applied, no such practical tests, however, were proposed, nor did the libellants' witnesses suggest any different hammering of the plates than that done by the numerous surveyors and other persons who examined the ship. Accordingly the Court held that the District Court's findings of due diligence were by no means clearly erroneous (1343).

The District Court had found that the vessel encountered winds and seas of a violence rarely encountered on any sea (1281) and that the winds and waves caused the grooving and cracking of the G-2 plate, making manifest a latent defect which, with the exercise of due diligence, had not been ascertained (1281). It found that the plating and beams could be easily inspected between the cargo battens (1288); that on the January, 1939 and the November, 1939, surveys, the port engineer, marine superintendent, surveyors of the American Bureau of Shipping, United States Local Inspectors of the Department of Commerce and the ship's officers, all experienced men, *on careful inspections, made in the usual and approved manner,* found no excessive corrosion and no grooves in the G-2 plate; that "the thinness of the plate could only have been found by drill-

ing, which certainly could not have been required, unless something appeared to the eyes which required it" (1279, 1289, 1290); that the beans did not get into the rose box leading to the pumps through any fault of the ship (1296); that the carrier exercised due diligence to make the Zarembo seaworthy, and that the damage was caused by a peril of the seas and not by any negligence of the ship (1296).

On the facts the Circuit Court of Appeals held that it need not go further into the niceties of examinations for seaworthiness for the District Court's findings of due diligence were by no means clearly erroneous (1343). On the question of perils of the sea, it held that the evidence clearly supported a finding that the ship ran a gauntlet of perilous seas, one of which, of quite a freakish nature, shook the whole vessel violently, rivet heads popping off with the straining of the ship and a long list of other heavy weather damage was enumerated (1344). It did not criticize or overrule the District Court's finding that the damage was caused by perils of the seas, saying it was unnecessary to find that these perils alone proximately caused the damage, because of the finding of due diligence which it affirmed, saying: "At least perils of the sea were a contributing cause of the damage;", the vessel beginning to leak only after unusually severe weather, which was further support for the conclusion that the shipowner should be exculpated from liability for sea water damage under the Carriage of Goods by Sea Act, § 4(2), which provides that the shipowner shall not be liable for perils of the sea (1344).

The statement that, there being no conflict of evidence as to what was done by any of the witnesses whose testimony is relied on to establish diligence raises a pure question of law, simply begs the question. It overlooks entirely the testimony that the method of examination adopted was the usual one found to be acceptable, as found by the District Court (1279) and that the witnesses found that they

had been able to discover defects by such examinations (958, 959, 304) and that it is all that is necessary to discover such defects (329); also that the experts on both sides disagreed as to the causes of the defect, and the thoroughness of the inspections (396-405, 428-432).

On the face of the opinion of the Circuit Court of Appeals it is quite unfair to characterize its conclusion as one resting upon the fact that the vessel had gone through two surveys and some of the plating had been hammer-tested and numerous visual examinations made. It found that the plating was hammer-tested inside and out (1343). The assumption that no one would seriously contend that a competent and diligent surveyor could not by proper examination ascertain the unseaworthy condition of a steel plate which has wasted away, in two grooves several feet long on both the outside and inside to one-quarter of its original thickness, again begs the question. Before the damage, as we have seen, there was no evidence of any groove on the outside or the inside, or that the plate had wasted away visibly, and only after the vessel returned to New York was it found that the metal had been oxidized and weakened along what became the grooves when the plate cracked.

The assumption on page 6 of the brief that the decision below could be explained only on one of two theories there stated, gives little credit to the wisdom of that Court. *No one contended in either of the lower courts* that the requirement of due diligence is satisfied by employing reputable surveyors and the customary crew. Nor is any such rule even suggested in the opinion of either Court or in the findings of fact or conclusions of law below. Indeed, the District Court expressly held to the contrary, citing the very case on which petitioners rely (*International Navigation Co.* v. *Farr & Bailey Manufacturing Company,* 181 U. S. 218 (1274). His decision (on that point called "lip service" by petitioners) was affirmed in all respects except as to his conclusion on the claim clause of the bill of lading

on which two of the Circuit Judges disagreed with him. This question became immaterial, however, as we have pointed out.

The other theory mentioned is that the Court must have found that the surveyors and others exercised due diligence by merely looking at the G-2 plate and hammer-testing a few others. We have amply demonstrated that the lower courts based their decisions on no such finding or conclusion.

Questions Involved

As we have seen, Question I on page 7 of petitioners' brief does not arise at all. Both Courts answered this question "No" and no one in the case ever contended to the contrary. It would require a vivid imagination indeed to think that such a question was ever in the case.

Question II is based on incorrect assumptions of fact, as shown above, and therefore was never in the case. It overlooks the fact entirely that there was no gradual wasting away of the outside shell, the evidence showing that there were no grooves before the ship sailed on the voyage; that the place where the plate weakened and finally cracked had been filled with hard scale or oxidized metal which, along the line of the cracks, could not be dug out with a knife, and it required a cold chisel or sharp instrument and hammer to dislodge such scale along the line of such a groove after the ship returned (282, 285, 350, 352, 1091, 1092, 1125-1127, 342, 343, 333). The reference to the fourth of the original thickness referred to the thickness of the metal at the base of the cracks after the ship returned and the plate had been taken off long after the original failure and after wedges had been driven in the cracks and the edges had worked on each other during the remainder of the voyage (584, 895)—"hindsight" as the Circuit Court of Appeals aptly said.

Reasons for Not Granting the Writ

1. The Circuit Court of Appeals Has Not Decided Any Important Question of Law Which Has Not Been Settled by This Court

The history leading up to the adoption of the Carriage of Goods by Sea Act given on page 8 of the petition is interesting but not of great importance in this case except so far as it shows one purpose was to relieve the shipowner from liability for damage not due to any failure to exercise due diligence, whereas under the Harter Act the ship was liable even if the failure to use due diligence did not cause the damage, as held in *May* v. *Hamburg Amerikanische &c.* [*The Isis*], 290 U. S. 333. So far as due diligence is concerned, it adopted the language of the Harter Act and the Courts all agree that the rule as to the requirement of due diligence is the same under both acts. Indeed, this is one point on which the District Court (1274), the Circuit Court of Appeals by its affirmance, and counsel on both sides in this case agree (see Petitioners' Brief, pp. 9-10). This Court has laid down the rule as to due diligence in a number of cases. (See: *The Wildcroft*, 201 U. S. 378; *The Silvia*, 171 U. S. 462; *International Navigation Company* v. *Farr and Bailey Manufacturing Company*, *supra.*)

2. The Decision of the Circuit Court of Appeals Conflicts With No Decision of Other Circuit Courts of Appeals or of This Court

As we have seen, neither of the lower Courts even suggested that a shipowner could discharge his duty by employing reputable surveyors or delegate his duty of due diligence, nor did anyone so contend.

On page 10 petitioners seem aggrieved that the Circuit Court of Appeals did not mention *International Naviga-*

tion Co. v. *Farr & Bailey Manufacturing Co.*, but why should it as the District Court whose decision was affirmed by the Circuit Court of Appeals based its decision on the rule established by that case and the decisions of other Circuit Courts of Appeals cited on page 9 of petitioners' brief? Both Courts based their decisions on the care which was exercised by the witnesses in the examination and testing of the plating (1343, 1279).

Answer to Petitioners' Brief

Point I Is Already Answered Above

Petitioners' Point II on page 17 again begs the question. It attempts to make "hindsight" (the word used by the Circuit Court of Appeals) and what occurred after the accident determine the rule which should be applied to inspections before the accident. In other words, it makes the result determine the diligence.

There was no evidence of surface corrosion that could be seen before the accident and the District Court so found on the evidence (1281) and its decision was affirmed. All that was found were the grooves in the line of the two cracks after they occurred which is the only time that such grooves are found, as Mr. Lyell Wilson and Mr. Haight with their years of experience testified (292, 350-352) and as proven by the fact that oxidized metal or scale in a groove had to be dislodged by a hammer and cold chisel. The use of an ordinary jacknife was of no effect.

The record shows that those who inspected the Zarembo on at least three occasions before the voyage in question paid particular attention to the forward plates in the No. 1 hold which included the G-2 plate, even gouging in with a steel scraper where this plate joined the fore and aft beam, using a knife on it, and hitting the plate with a scraper and striking the plates in the forward hold with

a hammer (599, 606, 611-612, 551, 950, 561, 959-960, 554-556). The reference to heavy sweating of the holds in this vessel's trade has no weight, first for the reason that it could only occur about twice a year and then only for two or three days, for the reason that such vessels made only about four voyages to Africa in a year and it was only in the winter time, in coming this way for several days from warm to cold air that any sweating could occur (108, 487), and second, as the District Court found, there were drain holes in the longitudinal beams, about ¾″ in diameter, about 1″ from the ship's side and about 6″ apart to draw down any sweat (1288, 1081).

The fact that the F-1 plates were so carefully examined and drilled in January, 1939, shows as both Courts held, that the surveyors were probably spurred on to exercise even more care in the tests actually employed on the forward part of the vessel (1344, 1279). Moreover, the so-called wasted condition of the F-1 plates was a totally different condition from that found in the G-2 plate. The one was a surface wastage caused by chafing of the anchor chain and water friction (555). The other was a latent defect in the G-2 plate caused by panting strains.

In *The Tela*, 1936 A. M. C. 838 (petitioners' brief, p. 20) it was admitted that the plating of the ship had not been examined for over a year before the breakdown and the surveyor who made the examination was not examined as a witness but only a letter from him produced. There is no suggestion in the opinion that the plating should have been hammered.

In *The Millie R. Bohannon*, 64 Fed. 883 (petitioners' brief, p. 19), the schooner when five days out met a dead calm and rolled considerably in a heavy swell, springing a leak and taking in three feet of water in spite of the pumps. The opinion does not show what inspection was made before sailing so is not helpful.

In *Brazil Oiticica, Ltd.* v. *The Bill,* 47 F. Supp. 969, the damage was due to a hole in the bilge pipe caused by the corroding effect of sulphurous acid and copper salts in combination with seawater, which could have been avoided by cleaning the holds and bilges after carrying sulphur and copper, which was not done. It was held that the shipowner did not exercise due diligence, and was chargeable with knowledge of the effect of such cargoes. There had been no inspection of the pipe. The Carriage of Goods Act (U. S. Code, § 1304 (2) (a) to (p)) provides that the ship shall not be responsible for loss or damage arising or resulting from "* * * (p) Latent defects not discoverable by due diligence." The statement in the opinion that the latent defect was not due to any flaw in the metal is not material to the decision.

In *The Julia Luckenbach,* 235 Fed. 388, the hull of the vessel at the place in question, where a hole was rusted through and the leak occurred, had not been thoroughly inspected for more than a year and it was known that sugar cargoes caused the corrosion which occurred. In fact, one witness testified that a ship's plates could be eaten away by such a compound in less than twelve months.

In *The Georg Dumois,* 88 Fed. 537, four days after the vessel left New York the stay bolts in the boiler leaked to such an extent as to deprive the vessel of operating power and when removed it was found that the threads of the bolts were corroded and the plates were so impaired where the bolts entered that they were reamed out and larger bolts necessarily used. It is not shown what inspection of the bolts there was before leaving port. Under the wording of the charter party the court held that the owners agreed to maintain the vessel in a thoroughly efficient state in hull and machinery (p. 542). As we see it this case did not involve the Harter Act at all, which deals with bills of lading—not charter parties—and the Harter Act does not appear to

have been incorporated in the charter party. The case finally turned on the point that the owners did not fulfill such warranty in the charter.

In *Nord-Deutscher Lloyd* v. *President, etc. of Insurance Co. of North America*, 110 Fed. 420, a lighter began to leak heavily in Baltimore Harbor and overturned shortly after being released from a steamer, due to improper caulking and lack of proper inspection. It is difficult to see how the Harter Act could apply to such a case as it is limited to a vessel transporting merchandise to or from any port in the United States and does not exempt the vessel from liability for unseaworthiness, even if due diligence is exercised.

POINT I

The concurrent findings of the two lower Courts that due diligence was exercised and the damage caused by perils of the sea are findings of fact and should not be disturbed.

In *The Wildcroft*, 201 U. S. 378, 387, the findings of due diligence by both the District Court and the Circuit Court of Appeals were treated as concurrent findings of fact and therefore were not disturbed.

In *The Quarrington Court*, 1941 A. M. C. 1234 (C. C. A., 2) it was recognized that a finding of due diligence in a cargo damage case was a finding of fact.

To the same effect see *The Venice Maru*, 1943 A. M. C. 277, 285, 286.

It makes no difference whether the determination of a question of fact is called a finding or a conclusion. Its treatment is the same. See *The Venice Maru* (*supra*).

Obviously the question of due diligence must have been a question of fact because it depended on the testimony as to what the surveyors and other numerous witnesses did

with the plating, whether the inspection was the usual and accepted one, and whether it had been found sufficient to discover defects in plating.

Admiralty rule, 46½ of this Court, provides that a finding of fact of the District Court shall not be set aside unless clearly erroneous. In construing this rule it was held in *Petterson Lighterage & T. Corp.* v. *New York Central R. Co.*, 126 F. (2d) 992, that the power to review the facts in an admiralty case is no broader than that under the Federal Rules of Civil Procedure providing that findings of fact shall not be set aside unless clearly erroneous and hence findings on conflicting evidence should not be disturbed.

The District Court found in the case at bar:

> "From the foregoing it seems clear that inspections were carefully made in the usual and approved manner" (1279).

That Court further found that "the thinness of the plate could only have been found by drilling, which certainly could not have been required, unless something appeared to the eyes which required it" (1279); "The wind and storm from which the 'Zarembo' suffered was a peril of the sea" (1282); that the Zarembo had continuously maintained the highest class of the American Bureau of Shipping, was inspected by its surveyors and the United States Local Inspectors yearly, and whenever she was on drydock, and complied with all requirements (1289); that in November, 1939, and in January, 1939, just before she sailed on the voyage in question, the Zarembo had been examined by the Port Engineer and Marine Superintendent of her owner, surveyors of the American Bureau, United States Local Inspectors and the ship's officers, all experienced men, none of whom found any unusual corrosion, and none of whom found any groove in the G-2 plate (1289); that on leaving the last port in Africa the Zarembo was in good condition, properly manned, equipped and

supplied (1293); that the "carrier at and before the beginning of the voyage exercised due diligence to make the ship 'Zarembo' seaworthy" (1296); that "The damage * * * was caused by a peril of the sea and not by any negligence of the ship or those for whose actions she is responsible" (1296); "The effect of the winds and waves was to cause panting of the 'Zarembo,' grooving, and the cracking of the G-2 plate, * * * thus making manifest a latent defect in the G-2 plate, which, with the exercise of due diligence on the part of the ship and her owner, had not been ascertained" (1281).

The Circuit Court of Appeals affirmed the District Court's decision without criticising or setting aside any of the above findings. It would seem unnecessary, therefore, to discuss the testimony in detail. If, however, the court should wish to examine it, we call attention to the following pages of the record where the testimony amply sustains the findings.

Perils of the sea:

See Hammond (697, 701); Atwood (576-579); Chief Engineer Rice, with 36 years' experience, had never seen such very heavy seas (825-827; 830-831; 855); Chief Officer Atwood, an officer in the naval service, with 24 years' experience, had never seen such weather before on such a voyage, and the steamer took two seas which were about as big as he had ever met with (586-589); Ginder, chief officer of a nearby vessel and with 10 or 11 years in that part of the Atlantic, never saw anything to equal the weather, with seas as high as in two hurricanes he had experienced (1056-1058); statement of damages (1247-1252).

Due diligence:

As to the careful examination made of this ship in January, 1939, and to the effect that no grooves or unusual corrosion were found in the G-2 plate on the outside or

on the inside or on the other surrounding plates, and that the surveyors had a hammer with them, using it on the plates, which is the general practice, the examination being the usual one, enabling one to find out any defects in the ship:

See Gledhill, Port Engineer (300-304); Captain Sparrow, Marine Superintendent (327-329; 332); Capt. Watkinson, United States Inspector (241, 243). He examined and tested the plating in No. 1 hold, including the G-2 plate, with a hammer and found the G-2 plate's condition good with no corrosion (243, 246). His method was the usual one to find any weakness in a plate (247, 248), and his survey took six days; Hammond (724, 726); Mackenzie, American Bureau Surveyor, examined the outside plating, examining all plates, including the G-2 and found everything satisfactory except the F-1 plates which he continued until the next regular drydocking (980-983) but they were then drilled and found satisfactory (Gledhill, 303). He carried a test hammer to pick doubtful spots and if there are any defects the hammer finds them. He saw no defects in the G-2 plate. He knew that vessels of the age of the Zarembo were prone to have weakened plates caused by panting and he had them in mind when he examined the forward plates (992). Hammond, second mate accompanied the American Bureau Surveyor and United States Inspector Watkinson on their inspection of the inside of No. 1 hold and found the G-2 starboard plate in good condition with no indentations or grooves (668, 669). He inspected this plate on the outside in drydock with the United States Inspector and American Bureau Surveyor and found the G-2 starboard plate all right with no dents or depressions (670-671).

As to the November, 1939, survey: Capt. Sparrow, Marine Superintendent, accompanied by American Bureau Surveyor Wilson, examined the outside plating, including

starboard G-2 plate. There was no evidence of undue corrosion or grooves (330-332). Atwood, Chief Officer, with U. S. Inspector Kelly, examined the inside of No. 1 hold, Kelly with his hammer knocking rivet heads and various places on the plates, looking for loose rivets or weak spots or corrosion (550). Atwood, with a steel scraper, using one end to sheer into and scrape off any film of rust and the other to knock the plate, climbing up the longitudinals, paying particular attention to the forward plates, including the G-2, *remembered distinctly knocking around on the G-2 plate and gouging the scraper along the longitudinals* and finding solid metal in the plate (551, 552) with no corrosion and no grooves (552, 553). American Bureau Surveyor, Narter, examined the plating in lower No. 1 hold, including the G-2 plates, climbing up longitudinals, using a hammer where there was any suspicion of corrosion or scale to determine wastage and whether it was advisable to drill. He found no depression or grooves or any accumulation of scale that warranted further examination; found the G-2 plate in satisfactory condition (265-266, 673-675). The survey was continued on the outside by two American Bureau surveyors, United States Inspector Kelly, Mr. Gledhill and Captain Sparrow. They found no grooving in the starboard *G*-2 plate and the surveyors used the usual hammer and made a very careful survey (Gledhill, 305, 306).

POINT II

The following authorities amply sustain the findings of due diligence and latent defect.

The Emilia, 1936 A. M. C. 22, 13 F. S. 7;
The Floridian, 1936 A. M. C. 1006, 83 F. (2d) 949;
The Francis L. Robbins, 1931 A. M. C. 1340, 49 F. (2d) 648;
The Schoharie, 1937 A. M. C. 610;

The Toledo, 1939 A. M. C. 1300, 30 F. S. 93;
The Bloomersdijk, 1936 A. M. C. 713;
The Sintram, 64 Fed. 884;
The Cameronia, 1930 A. M. C. 443, 38 F. (2d) 522;
The Cerosco, 1928 A. M. C. 403, aff'd. on another point 30 F. (2d) 254, 280 U. S. 320.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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Dated, December 22, 1943.